

## **Immigration courts need reform**

By MARK H. METCALF

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President Obama's recent call for comprehensive immigration reform and its echo in more recent Senate hearings largely miss the point that America's immigration system is upside down. No better example of this topsy-turvy failure is its immigration courts. Their frustrated judges call them "play courts." In reality, they are courts that are built to fail.

Since 2008, unexecuted deportation orders have increased from 558,000 to 1.1 million. From 1996 through 2009, 40 percent of all aliens the United States allowed to remain free pending trial — 770,000 out of 1.9 million — vanished before their hearings. In the five years following 9/11, 50 percent of all aliens outside custody disappeared. Courts are helpless to reverse this. Courts are impotent — so feeble, in fact, that they cannot enforce their own orders. And the Justice Department — the flagship agency which manages the courts — reported none of this.

The courts' yearly accounting to Congress is a sham. Numbers from Justice have masked the courts' disarray at a time in our history when the need for accurate reporting could not be greater. Results are predictable. No-show litigants, unenforced orders, listless caseloads, tardy relief for the worthy and at-risk American neighborhoods for the law-abiding are now standard fare for a system that nurtures scandal. "All should be troubled," says Judge Edward Grant of the immigration appeals court, "by the fact that only a small fraction of [deportation orders] ... is actually executed." And he was right. The department's inspector general reported in 2003 that no more than 3 percent of asylum seekers ordered removed were actually deported. Other numbers reveal a fiscal quagmire.

Federal spending for America's immigration courts during the past 24 years has skyrocketed. In 1987, courts were budgeted at \$20.5 million. By 2010, Congress authorized \$298 million for them — a 1,450-percent increase. Despite this spending, enforcement softened and illegal populations climbed. In 1989, the Government Accountability Office (GAO) stated 2.2 million illegal aliens resided in the United States. By 2007, the Census Bureau found 12 million. But softened enforcement has not produced softened costs. In 1987, \$265 million in federal spending was committed to immigration enforcement.

By 2009, Customs and Border Protection (CBP) received \$7.7 billion and Immigration and Customs Enforcement (ICE) got \$4.3 billion for their security initiatives — an increase of more than 4,500 percent. Still, courts remain ineffective, borders unsecure and illegal entry unchecked.

Immigration is vital to America. Energy, innovation and entrepreneurial zeal — all playing out on the canvas of freedom that defines America — prove a nation welcoming beyond any the world has ever seen. America accepts more lawful permanent residents and new citizens each year than all nations of the world combined. From 1820 through 2006, 72 million immigrants journeyed to the United States. Thirty million foreigners visit each year and, more important, take home our still shining example. Between 1995 and 2005, 25 percent of all Silicon Valley startups had at least one immigrant founder. Together these businesses grossed \$52 billion in sales and created 450,000 jobs. Our wealth is counted in other ways, too. Twenty percent of America's Medal of Honor recipients — 716 out of 3,408 — are not native sons, but those we adopted. Moreover, they adopted us.

The goal of immigration done right is diminished by a Justice Department that cannot square with the American public. More precisely, court executives — who have sanitized yearly reports to Congress and standardized dysfunction — have failed, and an entire court system struggles with their deceit.

Courts built to fail are not caused by accident. They are, instead, the result of neglect and intent — neglect by allowing things to get this way and intent by disguising the truth inside numbers that camouflage disorder and impair liberty. If those who report the courts were as brave and as trusting of the American people as the many who leave home to risk all on the promise of our exceptionalism, we'd have better immigration courts and even better immigration.

In one respect, at least, President Obama is right: Reform is needed.

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